

### § 11.33

with the development of the Assessment Plan or any other assessment actions.

(b) *Plan approval.* The authorized official shall have final approval as to the appropriate methodologies to include in the Assessment Plan and any modifications to the Assessment Plan.

(c) *Public involvement in the Assessment Plan.* (1) The authorized official must make the Assessment Plan available for review by any identified potentially responsible parties, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested member of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate. The authorized official may not perform any type B procedures described in the Assessment Plan until after this review period.

(2) Any comments concerning the Assessment Plan received from identified potentially responsible parties, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in §11.90 of this part.

(d) *Plan implementation.* At the option of the authorized official and if agreed to by any potentially responsible party, or parties acting jointly, the potentially responsible party or any other party under the direction, guidance, and monitoring of the authorized official may implement all or any part of the Assessment Plan finally approved by the authorized official. Any decision by the authorized official to allow or not allow implementation by the potentially responsible party shall be documented in the Assessment Plan.

(e) *Plan modification.* (1) The Assessment Plan may be modified at any stage of the assessment as new information becomes available.

(2)(i) Any modification to the Assessment Plan that in the judgment of the authorized official is significant shall be made available for review by any identified potentially responsible party, any other affected natural resource trustees, other affected Federal

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or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before tasks called for in the modified plan are begun.

(ii) Any modification to the Assessment Plan that in the judgment of the authorized official is not significant shall be made available for review by any identified potentially responsible party, any other affected natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public, but the implementation of such modification need not be delayed as a result of such review.

(f) *Plan review.* (1) After the Injury Determination phase is completed and before the Quantification phase is begun, the authorized official shall review the decisions incorporated in the Assessment Plan.

(2) The purpose of this review is to ensure that the selection of methodologies for the Quantification and Damage Determination phases is consistent with the results of the Injury Determination phase, and that the use of such methodologies remains consistent with the requirements of reasonable cost, as that term is used in this part.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply to the use of a type A procedure.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5174, Feb. 22, 1988; 59 FR 14282, Mar. 25, 1994; 61 FR 20609, May 7, 1996]

### § 11.33 What types of assessment procedures are available?

There are two types of assessment procedures:

(a) Type A procedures are simplified procedures that require minimal field observation. Subpart D describes the type A procedures. There are two type A procedures: a procedure for coastal or marine environments, which incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 2.51 (NRDAM/CME); and a procedure for Great Lakes environments, which incorporates the Natural Resource Damage Assessment Model for Great Lakes

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Environments, Version 1.51 (NRDAM/GLE).

(b) Type B procedures require more extensive field observation than the type A procedures. Subpart E describes the type B procedures.

[61 FR 20610, May 7, 1996, as amended at 62 FR 60459, Nov. 10, 1997; 65 FR 6014, Feb. 8, 2000]

### § 11.34 When may the authorized official use a type A procedure?

The authorized official may use a type A procedure only if:

(a) The released substance entered an area covered by the NRDAM/CME or NRDAM/GLE. Section 3.4, Volume III of the NRDAM/CME technical document (incorporated by reference, see § 11.18) identifies the areas that the NRDAM/CME covers. Section 6.2, Volume III of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) describes the areas that the NRDAM/GLE covers;

(b) The NRDAM/CME or NRDAM/GLE cover the released substance. Table 7.1, Volume I of the NRDAM/CME technical document lists the substances that the NRDAM/CME covers. Table 7.1, Volume I of the NRDAM/GLE technical document lists the substances that the NRDAM/GLE covers;

(c) The released substance entered water at or near the surface;

(d) At the time of the release, winds did not vary spatially over the area affected by the release in a way that would significantly affect the level or extent of injuries;

(e) The authorized official is not aware of any reliable evidence that, for species that are likely to represent a significant portion of the claim, the species biomass is significantly lower than the species biomass assigned by the NRDAM/CME or the NRDAM/GLE Tables IV.2.1 through IV.2.115 and IV.5.1 through IV.5.77, Volume III of the NRDAM/CME technical document list the species biomasses in the NRDAM/CME, Tables III.3.17 through III.3.27 and III.3.40 through III.3.50, Volume III of the NRDAM/GLE technical document list the species biomasses in the NRDAM/GLE ; and

(f) Subsurface currents either: are not expected to significantly affect the level or extent of injuries; or are rea-

sonably uniform with depth over the water column in the area affected by the release.

[61 FR 20610, May 7, 1996]

### § 11.35 How does the authorized official decide whether to use type A or type B procedures?

(a) If the authorized official determines under § 11.34 that a type A procedure is available, the authorized official must then decide whether to use that procedure or use type B procedures. The authorized official must make this decision by weighing the difficulty of collecting site-specific data against the suitability of the averaged data and simplifying assumptions in the type A procedure for the release being assessed. The authorized official may use type B procedures if they can be performed at a reasonable cost and if the increase in accuracy provided by those procedures outweighs the increase in assessment costs. Section 1, Volume I of the NRDAM/CME technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/CME. Volumes III through IV of the NRDAM/CME technical document list the data in the NRDAM/CME. Section 1, Volume I of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/GLE. Volume III of the NRDAM/GLE technical document lists the data in the NRDAM/GLE.

(b) The authorized official must use type B procedures rather than a type A procedure whenever a potentially responsible party:

(1) Submits a written request for use of type B procedures along with documentation of the reasons supporting the request; and

(2) Advances all reasonable costs of using type B procedures within a time frame acceptable to the authorized official.

(c) If there is no available type A procedure, the authorized official must use type B procedures to calculate all damages.

(d) Except as provided in paragraph (b) of this section, the authorized official may change the type of procedure used in light of comments received on